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Nos. 111-113

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

PHILLIPS PETROLEUM COMPANY, *Appellant*,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and NATURAL GAS PIPELINE COMPANY OF AMERICA, *Appellees*.

PHILLIPS PETROLEUM COMPANY, *Appellant*,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and MICHIGAN-WISCONSIN PIPE LINE COMPANY, *Appellees*.

PHILLIPS PETROLEUM COMPANY, *Appellant*,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and PANHANDLE EASTERN PIPE LINE COMPANY, *Appellees*.

On Appeal from the Supreme Court of the State of Oklahoma

JURISDICTIONAL STATEMENT

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Appendix "A":

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. ——

PHILLIPS PETROLEUM COMPANY, *Appellant*,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and NATURAL GAS PIPELINE COMPANY OF AMERICA, *Appellees*.

No. ——

PHILLIPS PETROLEUM COMPANY, *Appellant*,

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No. ——

PHILLIPS PETROLEUM COMPANY, *Appellant*,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and PANHANDLE EASTERN PIPE LINE COMPANY, *Appellees*.

On Appeal from the Supreme Court of the State of Oklahoma

JURISDICTIONAL STATEMENT

Appellant appeals from the final orders and judgments of the Supreme Court of the State of Oklahoma entered on October 8 and December 4, 1956, purporting to comply with the opinions and mandates of this Court issued in cases Nos. 320, 321 and 322, October Term, 1954. Although docketed as separate appeals,

the three cases are companion cases involving the same issues, which from the beginning have been briefed, argued and considered on a single record. The orders in all three cases are substantially the same.

An appeal from the same order in the *Michigan-Wisconsin Pipe Line Company* case has been taken by appellee Michigan-Wisconsin Pipe Line Company in case No. 809, October Term, 1956.

An appeal presenting in part some of the same issues with respect to an order of the Kansas Corporation Commission is pending in case No. 797, October Term, 1956.

This statement is submitted to show that the Supreme Court of the United States has jurisdiction and that substantial federal questions are presented.

THE ORDERS BELOW

The orders appealed from are not officially reported and no opinions were written. Copies of the three orders are attached as Appendix "A". The order of the Supreme Court of Oklahoma entered on December 4, 1956, denying appellant's petition for rehearing is attached as Appendix "B".

JURISDICTION

This Court by per curiam opinion entered April 11, 1955, in *Natural Gas Pipeline Co. of America* v. *Corporation Commission of the State of Oklahoma*, 349 U.S. 44, and per curiam opinion entered April 18, 1955, in *Michigan-Wisconsin Pipe Line Co.* v. *Corporation Commission of the State of Oklahoma* and *Panhandle Eastern Pipe Line Co.* v. *Corporation Commission of the State of Oklahoma*, 349 U.S. 908, reversed the decision of the Supreme Court of

Oklahoma affirming an order of the appellee Corporation Commission of Oklahoma fixing a minimum price for the sale of natural gas produced from the Guymon-Hugoton Field in Oklahoma.[1]

On October 8, 1956, the Supreme Court of Oklahoma, purporting to comply with this Court's mandates, entered its orders in the *Natural Gas Pipeline Company* and *Michigan-Wisconsin Pipe Line Company* cases modifying and only partially reversing the minimum price order of the appellee Corporation Commission of Oklahoma and entered an order (Tr. 81-82) in the *Panhandle Eastern Pipe Line Company* case completely reversing such price order. These are the orders appealed from herein except with respect to the *Panhandle Eastern Pipe Line Company* case in which the order of October 8, 1956, was superseded by an order entered on December 4, 1956, like the orders in the other two cases (see Appendix "A"). On October 16, 1956, appellant Phillips Petroleum Company filed its petition for rehearing in the three cases (Tr. 17-35) and on December 4, 1956, with one judge dissenting, the Supreme Court of Oklahoma entered its order denying appellant's petition for rehearing. Notice of appeal (Tr. 63-72, 89-97) to this Court was filed with the Clerk of the Supreme Court of Oklahoma on March 1, 1957, in each case except the *Natural Gas Pipeline Company* case in which the notice of appeal (Tr. 40-48) was filed on March 2, 1957.

The jurisdiction of this Court is twofold.

First, these appeals involve the construction and effect to be given the mandates of this Court in the

[1] Order No. 26096 entered July 29, 1952 (see Appendix "C").

prior appeals, 349 U.S. 44 and 908. In the prior appeals the jurisdiction was founded on 28 U.S.C. § 1257(2) and the fact that the Supreme Court of Oklahoma had upheld the validity of the minimum price order promulgated by appellee Corporation Commission of Oklahoma, a "statute of a state", against the claim that the order was repugnant to a statute of the United States, specifically the Natural Gas Act, 15 U.S.C. § 717 et seq., 52 Stat. 821.

The Supreme Court of Oklahoma has misconstrued and by its actions herein complained of refused to obey and give effect to the decisions and mandates of this Court. Inasmuch as "this court has power to do all that is necessary to give effect to its judgments." and "This appeal rests on the same foundation as did the first.", *Baltimore & O. R. Co.* v. *United States*, 279 U.S. 781, 785, it is clear that this Court has jurisdiction to review such action of the Supreme Court of Oklahoma.

Second, the jurisdiction of this Court to review the final orders and judgments of the Supreme Court of Oklahoma by appeal is conferred by 28 U.S.C. § 1257(2). By the orders and judgments herein appealed from the Supreme Court of Oklahoma has upheld the validity of the minimum gas price order of the Corporation Commission of Oklahoma as it applies to all gas except only "sales of residue gas under existing gas purchase contracts" against the claim that the order was repugnant to the Natural Gas Act, 15 U.S.C. § 717 et seq., 52 Stat. 821. This Court's jurisdiction to review such orders and judgments is sustained by the following decisions: *Natural Gas Pipeline Co. of America* v. *Corporation Commission of the State of Oklahoma* and *Natural*

Gas Pipeline Co. of America v. *Panoma Corp.*, 349 U.S. 44; *Michigan-Wisconsin Pipe Line Co.* v. *Corporation Commission of the State of Oklahoma* and *Panhandle Eastern Pipe Line Co.* v. *Corporation Commission of the State of Oklahoma*, 349 U.S. 908; *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179.

QUESTIONS PRESENTED

Appellant presents the following questions by these appeals:

1. Whether the Supreme Court of the State of Oklahoma by its orders vacating the minimum price order of the Corporation Commission of Oklahoma in part only rather than in its entirety, that is, only insofar as residue gas sales under existing gas purchase contracts are concerned, properly construed, followed and complied with the opinions and mandates of this Court on the prior appeals.

2. Whether by reason of the Natural Gas Act (15 U.S.C. § 717 et seq., 52 Stat. 821) and the jurisdiction and authority of the Federal Power Commission thereunder the minimum gas price order of the Corporation Commission of Oklahoma, as modified by the orders of the Supreme Court of Oklahoma, is valid insofar as it attempts to fix the minimum price at the wellhead of natural gas which is not sold at the wellhead but is gathered and processed for its liquid content and the residue sold by the producer, the appellant, in interstate commerce for resale for ultimate public consumption.

3. Whether by reason of the Natural Gas Act (15 U.S.C. § 717 et seq., 52 Stat. 821) and the jurisdiction and authority of the Federal Power Commis-

sion thereunder the minimum gas price order of the Corporation Commission of Oklahoma, as modified by the orders of the Supreme Court of Oklahoma, is valid insofar as it attempts to fix the minimum price at the wellhead of natural gas purchased by the appellant at the wellhead for sale in interstate commerce for resale for ultimate public consumption.

4. Whether the minimum gas price order of the Corporation Commission of Oklahoma, as reversed and modified in part only by the orders of the Supreme Court of Oklahoma and as it relates to gas sold in interstate commerce, violates the commerce clause (Section 8, Article I) of the United States Constitution.

STATUTE INVOLVED

The statute here involved is a legislative order of the appellee Corporation Commission of the State of Oklahoma as modified by the orders and judgments of the Supreme Court of Oklahoma herein appealed from.

The order as made by the Corporation Commission provides in part;

> "1. That no gas shall be produced from any well located in the Guymon-Hugoton Field of Oklahoma except at a price of not less than 9.8262¢ per thousand cubic feet if sold at the wellhead or on the lease or drilling unit from which produced, or a price equivalent to not less than 9.8262¢ per thousand cubic feet at the wellhead if sold off the lease or drilling unit or otherwise utilized. If the gas is sold during or upon conclusion of gathering without being processed for the extraction of liquid hydrocarbons, the price shall be not less than 9.8262¢ per thousand cubic feet plus the reasonable cost of gathering. If the gas is

processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall be not less than 9.8262¢ per thousand cubic feet."

A complete copy of the order is attached as Appendix "C".

By the orders and judgments of the Supreme Court of Oklahoma herein appealed from, such order was reversed only insofar as it applies to certain designated sales of residue gas under existing contracts and as thus modified was continued in effect as to all other sales of gas.

STATEMENT

Appellant, Phillips Petroleum Company, is a natural gas company as defined in the Natural Gas Act (15 U.S.C. § 717 et seq., 52 Stat. 821) and is engaged generally throughout the United States in the business of exploring for, developing, producing, buying and selling natural gas. Appellant is a substantial producer of natural gas in the Guymon-Hugoton Field involved herein. Appellant does not sell its gas at the wellhead but first gathers and processes the same for the removal of liquid hydrocarbons and then sells the residue for delivery at the exhaust of its processing plants. In addition, appellant has contracts with other producers in the field for the purchase of their gas at the wellhead which it gathers, processes, handles and resells in the same manner as it does its own produced gas.

All of the gas from certain of its leases is dedicated and, after gathering and processing, is sold to appellee Panhandle Eastern Pipe Line Company under a long-term contract for resale in interstate commerce. All

of the gas from its other leases and the gas purchased by it from other producers is dedicated and, after gathering and processing, is sold to appellee Michigan-Wisconsin Pipe Line Company under a long-term contract for resale in interstate commerce. The gas so sold to Panhandle Eastern Pipe Line Company and Michigan-Wisconsin Pipe Line Company is the same gas involved in the former appeals to this Court in these cases and in respect to which this Court held the minimum gas price order to be invalid. It is in part the same gas involved in the case of *Phillips Petroleum Company* v. *Wisconsin,* 347 U.S. 672, in respect to which this Court held appellant, Phillips Petroleum Company, to be a natural gas company under the Natural Gas Act.

By the order here involved the appellee Corporation Commission of Oklahoma fixed a minimum price of 9.8262¢ per Mcf for gas produced from the Guymon-Hugoton Field and sold at the wellhead, or if sold off the lease or otherwise utilized, the equivalent of such price at the wellhead. In the case of gas sold after gathering, the Commission determined that the equivalent of said wellhead price for the gathered gas was the wellhead price of 9.8262¢ plus the reasonable cost of gathering. In the case of gas sold after processing, the Commission found that the value of the liquids extracted from the gas compensated for the cost of gathering and processing the gas and determined that the equivalent of said wellhead price for the residue gas was the same as the wellhead price of 9.8262¢. As to all gas the price was related to the wellhead.

On appeal the Supreme Court of Oklahoma originally affirmed the minimum gas price order in its entirety.

In the ensuing appeals to this Court from such decision of the Supreme Court of Oklahoma this Court held that the regulation by the state of the price of natural gas sold for resale in interstate commerce was invalid as being in conflict with the jurisdiction over such sales vested in the Federal Power Commission by the Natural Gas Act. *Natural Gas Pipe Line Co. of America* v. *Corporation Commission of the State of Oklahoma,* 349 U.S. 44; *Michigan-Wisconsin Pipe Line Company* v. *Corporation Commission of the State of Oklahoma* and *Panhandle Eastern Pipe Line Co.* v. *Corporation Commission of the State of Oklahoma,* 349 U.S. 908.

Although this Court in its opinion mentioned as a fact that the purchase of gas by the appellants in the former appeals was of residue gas, the opinion of this Court was not based upon or limited to such fact but in principle extended to all sales of gas for resale in interstate commerce over which the Federal Power Commission was given jurisdiction under the Natural Gas Act.

Upon remand of the cases by this Court the Supreme Court of Oklahoma by the orders and judgments here appealed from in effect distinguished between sales of residue gas under existing gas purchase contracts and all other sales, holding that the gas price order of the Corporation Commission was "reversed, set aside and held for naught insofar as sales of residue gas" by Phillips Petroleum Company and other producers to the appellants in the prior appeals "under existing gas purchase contracts are concerned" (see Appendix "A").[2]

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[2] The initial order of the Supreme Court of Oklahoma entered October 8, 1956, in the Panhandle Eastern case was a complete reversal rather than a partial reversal (Tr. 81-82).

The effect of the Oklahoma Supreme Court's partial reversal of the gas price order is to retroactively make a new order applicable to all sales of natural gas for resale in interstate commerce, including wellhead sales, sales after gathering and residue sales under new contracts, except only sales of residue gas at the exhaust of processing plants under existing contracts.

Under the gas price order as originally made by the Corporation Commission, appellant Phillips Petroleum Company was not adversely affected because the order as written afforded to appellant the opportunity to obtain for its residue gas a price equivalent to the prescribed wellhead price and the price it was required to pay for its purchased gas. Not being adversely affected appellant had no cause to appeal.

The action of the Supreme Court of Oklahoma only partially reversing the Commission order subjects appellant to all of the wellhead provisions of the order as it applies both to appellant's produced and purchased gas without affording to appellant any means of getting the equivalent for the residue. Thus for the first time appellant is faced with an order which adversely affects its rights and interests.

The order as thus modified by the Supreme Court of Oklahoma so as to eliminate only residue sales under existing contracts is nonetheless made applicable to the same identical gas, except for processing and the point of incidence in interstate commerce, that this Court in the prior appeals held was not subject to price regulation by the state.

Within the time prescribed by the rules of the Supreme Court of Oklahoma, appellant on October 16, 1956, filed with the Clerk of said court its petition

for rehearing of such court's orders of October 8, 1956. In such petition for rehearing appellant asserted that the partial reversal of the Oklahoma Corporation Commission's order was not in compliance with this Court's opinion and mandate and that because of the jurisdiction of the Federal Power Commission under the Natural Gas Act the Oklahoma Corporation Commission had no jurisdiction or authority to prescribe the prices at which natural gas is sold for resale in interstate commerce whether the sale occurs at the wellhead or at some subsequent point (Tr. 26-29). Appellant's petition for rehearing was set for oral argument (Tr. 36), the questions thus presented fully briefed and argued both by appellant, the appellees and a number of parties amici curiae, and on December 4, 1956, the Supreme Court of Oklahoma entered its order denying the petition for rehearing (Tr. 37-39).

FEDERAL QUESTIONS ARE SUBSTANTIAL

The Supreme Court of Oklahoma in its orders modifying the minimum price order of the Corporation Commission of Oklahoma by setting it aside only "insofar as sales of residue gas * * * under existing gas purchase contracts are concerned" has completely ignored the reasoning and effect of the decision of this Court in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, and the decisions and mandates of this Court in the former appeals herein.

This Court in the former appeal in the *Natural Gas Pipeline Company* case held that the State of Oklahoma was without power to regulate the price of natural gas over which the Federal Power Commission has jurisdiction under the Natural Gas Act (349 U.S. at 44-45). Such holding was adopted in the former

appeals in the *Michigan-Wisconsin Pipe Line Company* and *Panhandle Eastern Pipe Line Company* cases (349 U.S. at 908). In so holding, this Court said that the decision in the case of *Phillips Petroleum Co. v. Wisconsin* was controlling.

In the case of *Phillips Petroleum Co. v. Wisconsin* this Court held that all sales of gas for resale in interstate commerce are subject to the jurisdiction of the Federal Power Commission granted by the Natural Gas Act. The Court in that case said:

> "* * * we believe that the legislative history indicates a congressional intent to give the Commission jurisdiction over the rates of all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipe line company." (347 U.S. at 682)

This Court then concluded:

> "Thus, we are satisfied that Congress sought to regulate wholesales of natural gas occurring at both ends of the interstate transmission systems." (Id. at 684)

This Court will take judicial notice of the fact that pursuant to its mandate in the *Phillips* case the Federal Power Commission in 1954 issued its series of No. 174 orders promulgating rules applicable to all sales of natural gas for resale in interstate commerce by independent producers[3] and since that time has

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[3] Federal Register, Vol. 19, No. 1, p. 4534, published July 22, 1954;

Federal Register, Vol. 19, No. 156, p. 5081, published August 12, 1954;

Federal Register, Vol. 19, No. 243, p. 8807, published December 23, 1954.

been exercising jurisdiction over all such sales whether made at the wellhead or at a subsequent point.

If the action of the Supreme Court of Oklahoma herein complies with this Court's mandate, then the Federal Power Commission has been flagrantly violating this Court's mandate in the *Phillips* case for almost three years.

Moreover, in *J. M. Huber Corp.* v. *Federal Power Commission,* 236 F. 2d 550, cert. den. 352 U.S. 971, the United States Court of Appeals for the Third Circuit sustained the Federal Power Commission's interpretation of this Court's decision in *Phillips Petroleum Co.* v. *Wisconsin,* supra, as giving the Federal Power Commission jurisdiction over all sales of natural gas for resale in interstate commerce whether made at the wellhead or in the field after gathering or after processing.

If the action of the Supreme Court of Oklahoma herein is allowed to stand and the Federal Power Commission continues to regulate all sales, including wellhead sales, of natural gas for resale in interstate commerce there is a direct conflict between the federal and state agencies involved.

It was to avoid such conflict that this Court in the *Phillips* case and on former appeal herein held that the state was without jurisdiction. In the *Phillips* case this Court in discussing the legal and practical impossibility of any such dual authority said:

> "* * * the jurisdiction of the Federal Power Commission was not intended to vary from state to state, depending upon the degree of state regulation and of state opposition to federal control." (347 U.S. at 681)

This same issue as to the authority of a state to regulate the price of natural gas sold for resale in interstate commerce is before this Court in the case of *Cities Service Gas Co.* v. *State Corporation Commission of Kansas, et al.,* No. 797, October Term, 1956. It is also presented by the appellee Michigan-Wisconsin Pipe Line Company in the case of *Michigan-Wisconsin Pipe Line Co.* v. *Corporation Commission of Oklahoma, et al.*, No. 809, October Term, 1956, in another appeal from one of the same orders here involved.

CONCLUSION

Appellant respectfully submits that the orders herein appealed from do not comply with or give full effect to the decisions and mandates of this Court in the former appeals and that these appeals present substantial federal questions which should be considered and disposed of on the merits.

Respectfully submitted,

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April, 1957

APPENDIX "A"

FILED
IN SUPREME COURT
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OCT 8, 1956.
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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 35,731

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Plaintiff in Error,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL., *Defendants in Error.*

Order

Now on this 8 day of October, 1956, it appearing that on the 18th day of April, 1955, the Supreme Court of the United States reversed the judgment of this court rendered on the 27th day of April, 1954, and that the mandate and opinion of that court have been received and filed by the Clerk of this court;

Now, THEREFORE, in conformity with the mandate and opinion of the Supreme Court of the United States, it is ordered as follows:

1. That the mandate heretofore issued from this court to the Corporation Commission of the State of Oklahoma, be recalled and vacated.

2. That a copy of this order and a copy of the opinion of the Supreme Court of the United States heretofore received and filed in this cause, together with proper mandate of this court, be forthwith transmitted to the Corporation Commission of the State of Oklahoma.

3. That Order No. 26096 of the Corporation Commission of the State of Oklahoma, which is the subject of the appeals of this court and the Supreme Court of the United

States, be and the same is hereby reversed, set aside and held for naught in so far as sales of residue gas by Panoma Corporation and its successors to Natural Gas Pipeline Company of America under existing gas purchase contracts are concerned.

4. That plaintiff in error recover its costs incurred in the Supreme Court of the United States as set forth in the mandate of that court in the amount of $1,498.10, and its costs incurred in this court, as shown by statement filed herein, in the amount of $707.61.

N. B. JOHNSON,
Chief Justice.

FILED
IN SUPREME COURT
OF OKLAHOMA
OCT 8, 1956.
ANDY PAYNE, CLERK.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 35,732

MICHIGAN-WISCONSIN PIPE LINE COMPANY,
Plaintiff in Error,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL., *Defendants in Error.*

Order

Now on this 8 day of October, 1956, it appearing that on the 18th day of April, 1955, the Supreme Court of the United States reversed the judgment of this court rendered on the 27th day of April, 1954, and that the mandate and opinion of that court have been received and filed by the Clerk of this court;

NOW, THEREFORE, in conformity with the mandate and opinion of the Supreme Court of the United States, it is ordered as follows:

1. That the mandate heretofore issued from this court to the Corporation Commission of the State of Oklahoma, be recalled and vacated.

2. That a copy of this order and a copy of the opinion of the Supreme Court of the United States heretofore received and filed in this cause, together with proper mandate of this court, be forthwith transmitted to the Corporation Commission of the State of Oklahoma.

3. That Order No. 26096 of the Corporation Commission of the State of Oklahoma, which is the subject of the appeals to this court and the Supreme Court of the United States, be and the same is hereby reversed, set aside and held for naught in so far as sales of residue gas by Phillips Petroleum Company and its successors to Michigan-Wisconsin Pipe Line Company under existing gas purchase contracts are concerned.

4. That plaintiff in error recover its costs incurred in the Supreme Court of the United States as set forth in the Mandate of that court in the amount of $100.00.

N. B. JOHNSON,
Chief Justice.

FILED
IN SUPREME COURT
OF OKLAHOMA
DEC 4 1956
ANDY PAYNE, CLERK.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 35,734

PANHANDLE EASTERN PIPE LINE COMPANY,
Plaintiff in Error,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL., *Defendants in Error.*

Order

Now on this 3rd day of December, 1956, it appearing that on the 18th day of April, 1955, the Supreme Court of the United States reversed the judgment of this court rendered on the 27th day of April, 1954, and that the mandate and opinion of that court have been received and filed by the Clerk of this Court;

NOW, THEREFORE, in conformity with the mandate and opinion of the Supreme Court of the United States, it is ordered as follows:

1. That the mandate heretofore issued from this court to the Corporation Commission of the State of Oklahoma, be recalled and vacated.

2. That a copy of this order and a copy of the opinion of the Supreme Court of the United States heretofore received and filed in this cause, together with proper mandate of this court, be forthwith transmitted to the Corporation Commission of the State of Oklahoma.

3. That Order No. 26096 of the Corporation Commission of the State of Oklahoma, which is the subject of the appeals to this court and the Supreme Court of the United States, be and the same is hereby reversed, set aside and

held for naught in so far as sales of residue gas by producers to Panhandle Eastern Pipe Line Company under existing gas purchase contracts are concerned.

4. That plaintiff in error recover its costs incurred in the Supreme Court of the United States as set forth in the mandate of that court in the amount of $100.00 and its costs incurred in this court.

N. B. JOHNSON,
Chief Justice.

APPENDIX "B"

FILED
IN SUPREME COURT
OF OKLAHOMA
DEC 4 1956
ANDY PAYNE, CLERK.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 35,731

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Plaintiff in Error,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL., *Defendants in Error.*

No. 35,732

MICHIGAN-WISCONSIN PIPE LINE COMPANY,
Plaintiff in Error,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL., *Defendants in Error.*

No. 35,734

PANHANDLE EASTERN PIPE LINE COMPANY, A CORPORATION, *Plaintiff in Error,*

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL., *Defendants in Error.*

Order

It is hereby ordered that petition of defendant in error, Phillips Petroleum Company, for rehearing of orders of October 8, 1956, be and the same is denied.

DONE BY ORDER OF COURT this 4th day of December, 1956.

N. B. JOHNSON,
Chief Justice.

BLACKBIRD, J., *Dissenting*:

I dissent to the orders this day entered in Causes Numbered 35,731, 35,732 and 35,734, for the reason that the decisions of the United States Supreme Court in Natural Gas Pipe Line Co. v. Panoma Corp., and Corp. Comm., 349 U. S. 44, 75 S. Ct. 576, Michigan-Wisconsin Pipe Line Co. v. Corp. Comm., 349 U. S. 908, 75 S. Ct. 798, and Panhandle-Eastern Pipe Line Co. v. Corp. Comm., 349 U. S. 908, 75 S. Ct. 598, reversed, generally, the previous decision of this court in the consolidated cases of Natural Gas Pipe Line Co. v. Corp. Comm., 272 P 2d 435, and did not specifically except from its operation and effect any part of the Corporation Commission's Order No. 26,096, nor any of the gas dealt with in said order.

APPENDIX "C"

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 3628
Order No. 26096

IN THE MATTER OF THE APPLICATION OF CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, FOR AN ORDER DETERMINING THE MINIMUM PRICE AT WHICH GAS PRODUCED FROM THE GUYMON-HUGOTON FIELD MAY BE FIRST PURCHASED OR SOLD

Report of the Commission

This cause came on for hearing before the Corporation Commission of Oklahoma in its Court Room, Capitol Office Building, Oklahoma City, Oklahoma, on the 20th and 21st days of February, 1952, at 10 o'clock, a.m., at which time all Commissioners were present and the case was heard.

The case was then continued to various dates and was finally heard on July 8th and 9th, 1952, and at the conclusion of the testimony on July 9th all parties announced that they had rested, the case was closed, and the matter was taken under advisement.

At all hearings the following appearances were entered: Rizley, Tyron and Sweet, E. H. Lange and C. H. Hinton appeared for Panhandle Eastern Pipe Line Company; R. M. Williams, Kenneth Heady and Cecil C. Hamilton appeared for Phillips Petroleum Company; Mark Adams appeared for Northern Natural Gas Company; C. C. Kuhne, Coleman Hayes, D. H. Culton, Warren T. Spies, B. M. Britain appeared for Natural Gas Pipeline Company; T. Murray Robinson and Dale & Dale appeared for applicants; L. T. Cramer appeared for Office of Price Stabilization; Joe Rolston and R. R. McCracken appeared for Cities Service Gas Company; Floyd Green, Conservation Attorney and Ferrill Rogers, Assistant Conservation Attorney, appeared for the Commission.

Now, on this the 29 day of July, 1952, the Commission being in executive session, the matter comes on for further discussion and the Commission being well and sufficiently advised in the premises, is of the opinion that the application should be granted to the extent hereinafter set out and therefore finds as follows:

Findings

1. That this is an application of certain mineral owners in Texas County, Oklahoma for an order determining the minimum price at which gas in the Guymon-Hugoton Field may be first purchased or sold.

2. That notice by publication of the filing of the application herein, the time and place of hearing thereon and the purpose of said hearing has been regularly given in all respects as required by law; that the cause was regularly

set for hearing, and the Commission has jurisdiction of the subject matter embraced in said application and all parties interested therein and jurisdiction to issue and promulgate the hereinafter prescribed order.

3. That various interested parties have filed responses to the application and answers, some of which were filed during the course of the proceedings and some of which by leave of the Commission were filed since the proceedings were closed.

4. That Mr. L. T. Cramer of the Office of Price Stabilization appeared and stated the position of that Federal Agency in respect to the application.

5. That under date of December 9th, 1946, the Commission issued its Order No. 19514, in Cause CD No. 1054, fixing the minimum price of 7¢ per thousand cubic feet of natural gas measured at a pressure base of 14.65 pounds absolute pressure per square inch for all gas taken out of the structures or formations in the Guymon-Hugoton Field, Texas County, Oklahoma; that said order was appealed to the Supreme Court of Oklahoma and the Supreme Court of the United States, both of which courts upheld the order of this Commission fixing said price and upheld the jurisdiction of the Corporation Commission to fix the price of gas in this particular field for the purpose of conservation and the protection of correlative rights.

6. That since the Commission issued its Order No. 19514, the general increase in commodity prices and the use value of gas have increased throughout the Guymon-Hugoton Field and elsewhere to the point that the production and sale of said gas from said field at any price less than 9.8262¢ measured at the wellhead at a pressure base of 14.65 pounds absolute per square inch, constitutes and causes waste, both physical and economic.

7. That the taking of natural gas from the Guymon-Hugoton Field at prices and under terms and measurement now prevalent in said field results in and causes:

a. Economic waste of a great natural resource; to-wit: natural gas;

b. Actual physical waste of natural gas;

c. Loss to the royalty owners in said field;

d. Loss to the State of Oklahoma in revenues in the form of gross production taxes;

e. Inequitable taking of natural gas from the common source of supply involved;

f. Discrimination against various producers in the field.

8. That the production of natural gas in the Guymon-Hugoton Gas Field is in excess of the market demand.

9. That the conditions which existed in the Guymon-Hugoton Field after it issued its Order No. 19514 have generally continued to prevail within said field, except that the price of 7¢ for gas therefrom is no longer adequate to prevent waste and protect the correlative rights of the parties therein and insure the development of and production from all of said common sources of supply during the time that facilities for the transportation from said Field to the market will be available.

10. That the representative of the Office of Price Administration stated in the record that a wellhead price for gas in said field of 9.8262¢ per thousand cubic feet measured at a pressure base of 14.65 pounds absolute per square inch will not violate the orders of the Office of Price Administration.

11. That only a small portion of the gas produced in said Field is actually sold or delivered at the wellhead and in all those instances where such sale and delivery does not occur at the wellhead, it will be necessary for the producer to determine whether or not it is realizing the equivalent of the minimum price fixed by this order; that much of the gas which is not sold at the wellhead is proc-

ssed by the producer for the extraction of liquid hydrocarbons and the residue then sold during or at the conclusion of gathering; that such processing and sale during or at the conclusion of gathering constitutes the performance of a valuable service to the purchaser, in that said processing conditions said gas for pipe line transmission, often including dehydration or desulphurization or both, and that the residue from numerous wells is delivered at a central point, thus eliminating the necessity for the purchaser to make substantial investments and incur substantial expense in gathering said gas; that the liquid hydrocarbons extracted by said processing are of value to the producer but that such value fluctuates from time to time depending upon competitive conditions not within the control of such producer; that, on the average and considering the fluctuations in value of said liquid hydrocarbons, the value realized by such producer from the sale or use of said liquid hydrocarbon does not exceed the cost of gathering and processing said gas, including a reasonable allowance for depreciation and return on investment; and that such producer, to realize a price for such gas equivalent to and not less than 9.8262 cents per thousand cubic feet at the wellhead, must receive for such processed gas a price of not less than 9.8262 cents per thousand cubic feet measured at a pressure base of 14.65 psia at a temperature of 60° F.

12. That residue gas containing 950 BTU per cubic foot saturated with water at standard conditions has a value for normal uses equal to that of the average gas produced from the Guymon-Hugoton field, but that residue gas having less than 950 BTU per cubic foot saturated with water at standard conditions does not have a value for normal uses equal to that of the average gas produced from the Guymon-Hugoton field and that, therefore, if such residue gas contains less than 950 BTU per cubic foot saturated with water at standard conditions, the minimum price for such residue gas should be in the proportion

that the BTU content of such gas bears to 950 BTU per cubic foot.

13. That for the purpose of preventing waste, economic and physical, of natural gas, for the purpose of protecting correlative rights, and to insure the greatest ultimate recovery of natural gas from the reservoir involved, this Commission should not permit natural gas to be taken out of the producing formations in the Guymon-Hugoton Field, at a price less than 9.8262¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

14. That a minimum price order cannot be made fully effective and discrimination prevented without a means provided for determining the manner in which the amount realized for gas by producers operating gathering and processing plants.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma as follows:

1. That no gas shall be produced from any well located in the Guymon-Hugoton Field of Oklahoma except at a price of not less than 9.8262¢ per thousand cubic feet if sold at the wellhead or on the lease or drilling unit from which produced, or a price equivalent to not less than 9.8262¢ per thousand cubic feet at the wellhead if sold off the lease or drilling unit or otherwise utilized. If the gas is sold during or upon conclusion of gathering without being processed for the extraction of liquid hydrocarbons, the price shall be not less than 9.8262¢ per thousand cubic feet plus the reasonable cost of gathering. If the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall be not less than 9.8262¢ per thousand cubic feet.

2. The minimum price specified above for the sale of residue gas after processing during or upon conclusion of gathering contemplates that said residue gas will contain at least 950 British Thermal Heating Units per cubic foot of gas saturated with water vapor at standard conditions. In the event such residue gas contains less British Thermal Heating Units than specified above, the minimum price for such gas shall be in the proportion that the British Thermal Heating Units of such gas is to 950 per cubic foot.

3. For the purpose of this order a cubic foot of gas shall mean a volume of gas contained in one cubic foot of space measured at a pressure of 14.65 pounds per square inch absolute at a temperature of sixty degrees Fahrenheit (60° F.).

4. This order shall become and be effective the 1st day of August, 1952.

DONE AND PERFORMED by the Corporation Commission of Oklahoma at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 29 day of July, 1952.

CORPORATION COMMISSION OF OKLAHOMA

REFORD BOND, *Chairman*
RAY O. WEEMS, *Vice-Chairman*
RAY C. JONES, *Commissioner*

ATTEST:

TOM McMURRAY
Secretary